

September 26, 2000. The substance of that interview is discussed throughout this Preliminary Amendment.

### III. Constructive Election

In the Advisory Action dated August 28, 2000, the Examiner refused to enter the Amendment filed July 17, 2000, on the ground that the amendment presented claims to a new statutory class of invention, and therefore was not fully responsive to the pending Office Action dated April 17, 2000. Thus, it was held that Applicants had constructively elected claims drawn to the claimed composition, and therefore could not add claims drawn to, for example, a method of using that composition.

Applicants traversed the holding of constructive election, and in the above-referenced telephonic interview, pointed out that these claims had been examined together in the Office Action of June 16, 1999. It was not, and would not be, unduly burdensome to examine these claims together. In light of the refusal to enter the Amendment filed July 17, 2000, Applicants have filed this CPA and presented both method and composition claims for examination.

### IV. Restriction and Election

Applicants now present claims drawn to, inter alia, a "method of treating . . . seborrheic dermatitis" (claim 38 *et seq.*), a "method of preparing a pharmaceutical composition" (claim 51), and a "shampoo" (claim 52). Similar claims appeared in the Preliminary Amendment dated May 26, 1998, and were examined together in the Office Action of June 16, 1999. In light of the recent telephonic interview, it is assumed that

the Examiner will require restriction between the method of use, the method of manufacture, and the composition claims. In order to expedite prosecution, should such a restriction requirement be entered, Applicants traverse, and provisionally elect claims drawn to the method of treating seborrheic dermatitis (claim 38 *et seq.*). Applicants traverse on the ground that these claims are not unduly burdensome to search the claims as presented. Moreover, the patentability of these claims is discussed in the Amendment filed July 17, 2000, at pages 11-13. See also Amendment and Response under 37 C.F.R. § 1.111 filed September 21, 1999.

**CONCLUSION**

Applicants respectfully seek an early and favorable action on the merits of this application. All pending claims are believed to be in condition for allowance.

If there is any fee due in connection with the filing of this Preliminary Amendment, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: September 28, 2000

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